

(1998) 08 CAL CK 0017

In the Calcutta High Court

Case No : Civil Appellate Jurisdiction M.A.T. No. 2763 of 1998

N.K. Chakrabarty, IAS (Retd), President, Executive
Committee and Others

APPELLANT

Vs

The Council for the Indian School Certificate Examination and
Others

RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 16, 21, 226

Citation : (1999) 1 CALLT 42

Hon'ble Judges : Vinod Kumar Gupta, J; Sujit Barman Roy, J

Bench : Division Bench

Advocate : Mr. Saktinath Mukherjee, Ms. Debjani Sengupta and Mrs. Ratna Ghosh, for the Appellant; Mr. Utpal Bose and Mr. Sanjoy Boid, Mr. M.C. Das and Ms. Manisha Mukherjee, for the Respondent

Judgement

1. In this appeal we are concerned only with two questions of law, one relating to the territorial jurisdiction of this court and the other about the maintainability of the writ application against the respondent, Council for the Indian School Certificate Examination (Council, for short). It appears that the C.F. Andrews Educational Society had started a School by the name of C.F. Andrews Memorial School at Raghunathpore, Jhargram, in the district of Midnapore, W.B. In the year 1980. The Government of West Bengal had issued a "No objection" Certificate In favour of the School in the year 1992 and the Council had issued a certificate of provisional affiliation on 28.9.94 which was valid up till 31.3.1998. After the expiry of the aforesaid provisional affiliation the Council refused to accord regular affiliation to the School and, accordingly, a communication was Issued on 13.1.1998 by the Council addressed to the Principal of the School wherein certain deficiencies and short-comings in the functioning of the School were pointed out. The writ petitioners, who are the appellants before us feeling aggrieved because of non-granting of regular affiliation by the council approached this court by filing a writ petition under Article 226 of the

Constitution of India.

2. The learned single Judge before whom the aforesaid writ application came up for consideration dismissed the writ application vide his judgment dated 4.8.1998 only on two preliminary grounds, one for lack of territorial Jurisdiction, and the other on the ground of the maintainability of the writ application against the Council because, according to the learned single Judge the Council was not amenable to the writ Jurisdiction of this court since It was neither the State or an instrumentality of the State within the meaning of Article 12 of the Constitution of India nor did it fall within the definition of "Other Authority" under Art. 12 of the Constitution. The learned single Judge did not go into the merits of the controversy at all. Feeling aggrieved, the appellants have preferred this appeal under Clause 15 of the Letters Patent.

3. In so far as the question relating to the lack of jurisdiction Is concerned, we have no hesitation whatsoever in saying that the learned single Judge erred in law by dismissing the writ application on the ground because this court surely and certainly has the territorial Jurisdiction in this case, we say so because the School which Is at the centre of controversy with regard to the grant of affiliation Is located at Jhargram in the State of West Bengal. Clause 2 of Article 226 of the Constitution provides that the power vesting in a High Court to issue writs or directions to an Authority or person may be exercised by that High Court In relation to such territories within which the cause of action, fully or in part, arises for exercise of such power, notwithstanding that the seat of such Government, person or Authority is not within those territories. Clause 2 of Article 226 of the Constitution reads thus:

"(2) The power conferred by clause(1) to Issue directions, orders or writs to any Government, authority, or person may also be exercised by any High Court exercising Jurisdiction in relation to the territories within which the cause of action, wholly or In part, arises for the exercises of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories ..."

4. Now let us see what Is the cause of action In the present case. The entire cause of action, as for as the appellants are concerned relates to the grant of affiliation by the council In favour of (he School. Every dispute therefore with regard to all such questions relating to the affiliation revolves around the school itself. The location of the School therefore undoubtedly Is the principal factor determining the accrual of the cause of action. The School Is the nucleus because the students studying In the School are the one who would directly be affected by either the refusal or recognition or even the withholding of It. Any dispute therefore relating to the School and/ or the students In the School would amount to the accrual of the whole cause of action, notwithstanding the fact that the documents relating to such dispute may be lying at a place outside the territorial Jurisdiction of this court. We have no hesitation even to the extent of saying that If all the proceedings, starting from the Issuance of the first

communication or a notice, culminating In the passing of the final order, arise or take place at a location outside the territorial jurisdiction of this court, this court will still have the jurisdiction to entertain the writ application only because of the fact that the School, which is the subject matter of such proceedings or action Is located In the territory subject to the Jurisdiction of this court. Accrual of the whole cause of action In the present case therefore Is the very location of the school In the state of West Bengal about which the dispute was raised by the appellants in the writ application regarding the grant of affiliation to this School by the council. Whether the office of the council Is situated within the territories to which this court has Jurisdiction or not It wholly Immaterial in view of Article 226(2) of the Constitution because the jurisdiction vested in this court to Issue writs or directions against the council In this case Is relatable to the accrual and arising of the cause of action. As we have observed, the location of the School In the State of West Bengal by itself is enough to say that the whole cause of action has accrued to the appellants In the State of West Bengal.

5. Coming to the question of the maintainability of the petition against the council we wish to observe that even though the learned single Judge did not assign any reason for the view that he has taken, the very fact that the council Is engaged In the pursuit of granting of recognition to Schools and the awarding of certificates to students after It conducts the examinations, the council is performing a public utility service and Is engaged in the discharge of duties and responsibilities which are purely and wholly of public. The test of the pervasive control by the Government is not applicable to a case where the court is concerned with examining the Issue about an authority exercising such duties and functions as would amount to public service or utility duties, and If the court comes to a finding that the authority In fact Is engaged In such duties and functions it should not hesitate in holding that the authority would be amenable to the writ jurisdiction of the High Court in terms of Article 226 of the Constitution of India. This is more so when the exercise of public duty and the discharge of responsibility In the nature of public utility services are directly linked to the Imparting of education to children which has been held and declared to be a fundamental right, subject to the limitations Imposed upon it by the Supreme Court We are fortified in our view by two judgments of the Supreme Court-one in the case of Unni Krishnan, J.P. and others Vs. State of Andhra Pradesh and others etc. etc., and the other In the case of K. Krishnamacharyulu & Ors. v. Sri Kenkateswara Hindu. College of Engineering & Anr. reported in AIR 1998 SC 295. We have therefore no hesitation in holding and declaring that the council Is an Authority, amenable to the writ jurisdiction of the High Court In the exercise of power under Article 226 of the Constitution. A writ petition therefore filed against the council by aggrieved persons for enforcement of rights under Art. 226 of the Constitution Is maintainable against the council.

6. For the foregoing reasons therefore, we allow the appeal, set aside the judgment of the learned single Judge and direct that, In the light of the

observations made hereinabove, the writ application shall be considered by the learned single Judge all over again. All the Issues raised In the petition regarding the grant of recognition or otherwise shall be decided by the writ court on their merits. For that purpose therefore, we revive and restore the writ application to its original position. We direct the respondents to file affidavit-in-opposition to the writ application within two weeks from today, reply if any thereto within one week thereafter. The writ application shall be listed before the appropriate single Bench on 18.9.1998. We hope and trust that the learned single Judge on that very day shall consider and dispose of the question regarding the grant of Interim relief or otherwise. Nothing stated in this Judgment shall be construed as any expression of opinion by us with regard to the merits of the controversy forming the subject matter of the writ application.

7. The appeal is allowed. There will be no order as to consist

8. Certified copies shall be supplied to the parties within two weeks from the date of the filling of the application.

9. Application disallowed.